IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 510 OF 2007

IN

CONTEMPT PETITION NO. 10 OF 2005

IN

SUIT NO. 2812 OF 2001

Shiv Banwarilal Gupta .. Appellant

V/s

Jayesh Pandya & Ors. .. Respondents

Mr.Pankaj Kawli i/b Mr.Chaitanya Pendse for the Appellant.

Mr.D.D. Madon, Senior Advocate with Mr.J.P. Sen i/b Ms.Jacinta D'Silva for the Respondents.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 20TH JUNE 2007

P.C. :

1. Heard.

2. Right from day one of the hearing of the matter, i.e. 12th June 2007, the learned counsel appearing for the Appellant has submitted that the Appellant has realised his mistake and he wanted to tender apology for not complying with the direction of the court in the matter of affidavit disclosing the assets and also

wanted to file an affidavit disclosing the assets. However, since the Appellant had not shown real remorse, the matter had to be adjourned from time to time and was heard on all these occasions and today when the matter came up for hearing, the learned counsel for the Appellant filed an affidavit of the Appellant tendering apology and also disclosing his assets. The affidavit is taken on record and marked "X" for identification.

3. The Appellant had to face the contempt proceedings in Contempt Petition No.10 of 2005 on account of failure on the part of the Appellant along with others to comply with the directions which were issued by the learned Single Judge in the order dated 14th July 2004. By the said order, the Appellant was required to file an affidavit disclosing his assets and as the Appellant failed to comply with the said direction, a show cause notice came to be issued. Since no cause was shown against imposition of punishment, the impugned order came to be passed whereby the Appellant was held guilty of contempt of court for non-compliance of the said order dated 14th July 2004 and has been sentenced to undergo simple imprisonment for a period of two months and also pay fine of Rs.2,000/- in addition to cost of Rs.10,000/- to the Petitioner (Respondent No.1 herein).

4. Upon hearing the learned counsel for the Appellant and on perusal of the affidavit filed today and having tendered the sum of Rs.5,00,000/- for charitable purposes, we are satisfied that the Appellant, having realised his mistake, out of remorse has submitted an unconditional apology and simultaneously purged the contempt committed by him by disclosing his assets. While accepting the said apology, in our opinion, we do find it appropriate to set aside the sentence of simple imprisonment imposed against the Appellant while maintaining the fine of Rs.2,000/- and enhancing the cost of Rs.10,000/- imposed by the learned Single Judge to Rs.30,000/-.

5. The Appellant has tendered a pay order bearing No.000215/2007 dated 18th June 2007 for Rs.5,00,000/- drawn on Corporation Bank, Bombay in favour of Prothonotary & Senior Master. On credit of the said amount, the Prothonotary & Senior Master shall disburse an amount of Rs.2,50,000/- to the Maharashtra Legal Services Authority and the balance of Rs.2,50,000/- shall be disbursed to the ART Centre, Sir J.J. Hospital, Mumbai.

6. In view of the acceptance of the apology

tendered by the Appellant and the order passed above, the impugned order is set aside to the extent of simple imprisonment. The fine of Rs.10,000/- has already been paid as informed by the learned counsel for the Appellant. The balance of cost of Rs.20,000/- shall be paid within two weeks to the Respondent No.1. The Registry to accept the pay order and do the needful as directed above.

7. Order accordingly. Appeal stands disposed of.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)